

Date: 20090821

Docket: A-174-09

Citation: 2009 FCA 251

Present: SHARLOW J.A.

BETWEEN:

MAAX BATH INC.

Applicant

and

ALMAG ALUMINUM INC., APEL EXTRUSIONS LIMITED, CAN ART ALUMINUM EXTRUSION INC., METRA ALUMINUM INC., SIGNATURE ALUMINUM CANADA INC., SPECTRA ALUMINUM PRODUCTS LTD., SPECTRA ANODIZING INC., EXTRUDEX ALUMINUM, ARTOPEX INC., ASIA ALUMINUM HOLDINGS LTD., BLINDS TO GO INC., EXTRUDE-A-TRIM INC., GARAVENTA (CANADA) LTD., KAM KIU ALUMINIUM PRODUCTS (NA) LTD., KAM KIU ALUMINIUM PRODUCTS SDN. BHD., KROMET INTERNATIONAL INC., LOXCREEN CANADA, MALLORY INDUSTRIES, PANASIA ALUMINIUM (CHINA) LIMITED, PANASIA ALUMINUM (CALGARY) LIMITED, PANASIA ALUMINUM (MACAO COMMERCIAL OFFSHORE) LIMITED, PANASIA ALUMINUM (TORONTO) LIMITED, PINGGUO ASIA ALUMINUM CO. LTD., R-THETA THERMAL SOLUTIONS INC., RAILCRAFT INTERNATIONAL INC., REGAL ALUMINUM PRODUCTS INC., SHINING METAL TRADING INC., SINOPEC TRADING INC., TAG HARDWARE SYSTEMS LTD., TAISHAN CITY KAM KIU ALUMINIUM EXTRUSION CO. LTD., VITRE-ART C.A.B. (1988) INC., ZMC METAL COATING INC., ALFA MEGA INC., ALUMINART PRODUCTS LIMITED, ALUMINUM CURTAINWALL SYSTEMS INC., C.R. LAWRENCE CO. OF CANADA, CHINA SQUARE INDUSTRIAL LTD., CONCORD WEST DISTRIBUTION LTD., DIGI-KEY CORPORATION, HOME-RAIL LTD., HUNTER-DOUGLAS CANADA, INDEPENDENT CONTRACTORS AND BUSINESSES ASSOCIATION OF BRITISH COLUMBIA, KNOLL NORTH AMERICA CORP., LEVELOR/KIRSCH WINDOW FASHIONS (A DIVISION OF NEWELL RUBBERMAID/NEWELL WINDOW FURNISHINGS INC.), MILWARD ALLOYS INC., MORSE INDUSTRIES, NEW ZHONGYA ALUMINUM FACTORY LTD., NEWELL INDUSTRIES CANADA INC., NEWELL WINDOW FURNISHINGS INC., OPUS FRAMING LTD., PACIFIC SHOWER DOORS (1995) LTD., PROFORMA INTERIORS LTD. DBA ALUGLASS, RAHUL GLASS LTD., RUHLAMAT NORTH AMERICA LTD.,

**RYERSON CANADA, SILVIA ROSE INDUSTRIES, SONIPLASTICS INC.,  
VANCOUVER FRAMER CASH & CARRY LTD., VAP GLOBAL INDUSTRIES INC.,  
ZHAOQING CHINA SQUARE INDUSTRY LIMITED and ATTORNEY GENERAL OF  
CANADA**

**Respondents**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on August 21, 2009.

REASONS FOR ORDER BY:

SHARLOW J.A.

Federal Court  
of Appeal



CANADA

Cour d'appel  
fédérale

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**RYERSON CANADA, SILVIA ROSE INDUSTRIES, SONIPLASTICS INC.,  
VANCOUVER FRAMER CASH & CARRY LTD., VAP GLOBAL INDUSTRIES INC.,  
ZHAOQING CHINA SQUARE INDUSTRY LIMITED and ATTORNEY GENERAL OF  
CANADA**

**Respondents**

**REASONS FOR ORDER**

**SHARLOW J.A.**

[1] The respondent Regal Aluminum Products Inc. (“Regal”) has moved for leave to be an intervener in these proceedings rather than a respondent. The motion is opposed by the respondents Almag Aluminum Inc., Apel Extrusions Limited, Can Art Aluminum Extrusion Inc., Metra Aluminum Inc., Signature Aluminum Canada Inc., Spectra Aluminum Products Ltd., Spectra Anodizing Inc. and Extrudex Aluminum (I will refer to these parties collectively as the “Almag group”). The applicant Maax Bath Inc. (“Maax”) has taken no position.

**Background**

[2] In a decision rendered on March 17, 2009, the Canadian International Trade Tribunal (CITT) found that the dumping and subsidizing in Canada of custom-shaped and standard-shaped aluminum extrusions originating in or exported from the People’s Republic of China have caused injury to the domestic industry. Reasons for the decision were issued on April 1, 2009 (NQ-2008-03). A number of products were excluded from these findings.

[3] The CITT proceedings were commenced as the result of a complaint by a number of parties, some of whom comprise what I have now called the Almag group. Many parties appeared in opposition to the complaint. Some parties sought exclusions, some of which were granted and

others not. Regal and Maax sought exclusions without success (see paragraphs 365 and 368 of the CITT's reasons).

[4] On April 15, 2009, Maax filed an application for judicial review of the decision of the CITT, challenging a number of its findings on the main issue as well as its rejection of the exclusion request by Maax. All of the named parties were served. A notice of appearance has been filed by the Almag group, and by Ruhlamat North America Ltd. No other notices of appearance have been filed. Regal has not filed a notice of appearance. The matter has progressed to the point of the filing of the applicant's record and authorities, which were filed on August 19, 2009.

#### Motion to intervene

[5] On June 29, 2009, Regal filed a motion record containing a notice of motion seeking to be removed as a respondent and added as an intervener. The intended purpose of this change in status is to enable Regal to challenge the decision of the CITT to deny the exclusion requested by Regal. To that end, Regal wishes to file an "intervener's affidavit" and a memorandum of fact and law, and to present oral argument at the hearing. Alternatively, Regal seeks leave to commence an application for judicial review outside the statutory time limits.

[6] The Almag parties oppose Regal's motion.

#### Discussion

[7] I will deal first with the alternative request for an extension of time to file a notice of application for judicial review. The factors to be considered are (a) whether there was a continuing intention to challenge the CITT decision, (b) whether there is merit to the application, (c) whether

the other parties would be prejudiced, and (d) whether there is a reasonable explanation for the delay: *Canada (Attorney General) v. Hennelly* (1999), 244 N.R. 399 (F.C.A.).

[8] I accept the submission of Regal that the other parties would not be prejudiced by permitting it to commence a late application for judicial review. However, that is the only point that favours Regal. I am not persuaded, based on the evidence presented on the motion, that Regal had a continuing intention to challenge the decision of the CITT, or that there is a satisfactory explanation for the delay. It is suggested that certain documents were not made available to Regal, but there is no evidence of what attempts, if any, were made to obtain those documents.

[9] Nor has Regal established the existence of an arguable case. As I understand it, Regal proposes to argue that the CITT ignored Regal's evidence that the extruded aluminum products it imports from China are not available from domestic extruders. However, Regal has not provided this Court with the evidence that it says was given to the CITT. Further, the CITT stated this at paragraph 365 of its reasons:

... the Tribunal notes that Regal Aluminum did not provide any evidence of attempts to purchase the products from domestic producers and, instead, simply stated that it had not been approached by the domestic producers.

I cannot conclude on the record before me that Regal has a reasonable prospect of establishing that the CITT ignored its evidence.

[10] For these reasons, I would dismiss Regal's motion for an extension of time.

[11] I turn now to the motion to intervene. The rules permitting intervention are intended to provide a means by which persons who are not parties to a proceeding may nevertheless provide the Court with the benefit of their submissions. The rules are not intended to provide an opportunity to person who is a party to proceedings to repair the damage caused by its failure to protect its own position by acting on a timely basis. In the circumstances of this case, it would be an abuse of the rules to permit Regal to change its status from respondent to intervener.

[12] The motion to intervene will be dismissed. As no costs have been sought, none will be awarded.

“K. Sharlow”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-174-09

**STYLE OF CAUSE:** Maax Bath Inc. v.  
Almag Aluminum Inc.

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** SHARLOW J.A.

**DATED:** August 21, 2009

**WRITTEN REPRESENTATIONS BY:**

Richard S. Gottlieb

FOR THE RESPONDENT,  
Regal Aluminum Products Inc.

Ronald C. Cheng  
Peter Jarosz

FOR THE RESPONDENTS  
Almag Aluminum Inc., Apel  
Extrusions Limited, Can Art  
Aluminum Extrusion Inc., Metra  
Aluminum Inc., Signature Aluminum  
Canada Inc., Spectra Aluminum  
Products Ltd., Spectra Anodizing Inc.  
and Extrudex Aluminum

**SOLICITORS OF RECORD:**

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Canada Inc., Spectra Aluminum  
Products Ltd., Spectra Anodizing Inc.  
and Extrudex Aluminum